

Mark G. Cerel, Franklin Town Attorney

LAND DISPOSITION AGREEMENT (Draft)

AGREEMENT made this _____ day of _____, 20__.

1. Parties and Mailing Address:

The TOWN OF FRANKLIN, a municipal corporation, hereinafter called the "TOWN" or "SELLER", with an address of Municipal Building, 355 East Central Street, Franklin, MA 02038, agrees to sell and _____, a Massachusetts corporation (together with its successors, transferees and assigns), hereinafter called "DEVELOPER" or "BUYER", with an address of _____, agrees to purchase, upon the terms and conditions hereinafter set forth and as may be binding on the property and under applicable law, the premises described herein.

2. Description of Premises:

The property which is the subject of this agreement is described as follows: _____ . A plan showing the property to be conveyed is attached hereto and incorporated by reference herein in as Exhibit A.

3. Deed:

The TOWN shall convey said premises by a good and sufficient quitclaim deed running to the BUYER, and said deed shall convey a good and clear record and marketable title thereto, free from encumbrances, except as follows:

- (a) Provisions of building and zoning laws now existing and as may be existing at the time of the closing.
- (b) Easements, restrictions and reservations of record, if any, so long as the same do not prohibit or materially interfere with the use of the property for purposes set forth herein.
- (c) Such taxes for the then current year as are assessed subsequent to delivery of said deed, the property not presently being subject to taxation as municipal property.
- (d) Any liens for municipal betterments assessed after the delivery date.
- (e) Terms and conditions of this Land Disposition Agreement, Land Development Agreement, reverter/reversionary interest and/or mortgage, at TOWN's option, to ensure timely construction of Project consistent with TOWN's RFP and BUYER's Proposal.
- (f) Permanent restriction(s) contained in deed or other recorded instrument to ensure that the property is only used for _____; if such restriction(s) are contained in a separate instrument, it shall be recorded prior and be superior to BUYER's financing. All such restrictions shall be binding upon BUYER's successors, transferees and assigns and shall run with the land.
- (g) Deed restrictions to ensure that all property shall be owned or treated as owned by a for profit entity and not as tax-exempt or reduced tax property; and if such property becomes

owned by a non-profit or would regardless of ownership be entitled to reduced assessment or reduced tax obligations or treatment, that the property shall nonetheless be taxed and/or pay taxes or in lieu of tax payments, based on what the taxes would be if the owner/operator was a for profit entity or activity.

- (h) Such deed restrictions as necessary to ensure access and use to and of the subject property as provided for herein, including for parking purposes on the subject property.

4. Description of Project:

BUYER proposes to acquire the Premises for the purposes of _____ as set forth generally in the proposal of the BUYER dated _____ (BUYER's Proposal), submitted in response to the TOWN's Request for Proposals dated _____ (TOWN's RFP). The parties hereto acknowledge that specific design plans and site plans are not established as of the date hereof. All such plans shall comply with TOWN's RFP and BUYER's Proposal and shall be subject to TOWN's review and approval. BUYER may not deviate from its response to TOWN's RFP unless it receives TOWN's written prior approval, which approval shall be solely within TOWN's discretion. BUYER acknowledges that any use of the subject real estate shall be restricted as to the use and the manner set forth in this paragraph. All costs and expenses relative to construction and renovation for the project, including but not limited to any building demolition, removal of material from the site, environmental compliance expenses, abatement/remediation expenses, or the like, shall be the obligation of the BUYER and TOWN shall bear no portion thereof or responsibility therefor, the BUYER agreeing to indemnify, defend and hold harmless the TOWN from any such costs, expenses or liability arising therefrom and/or the work to be performed by the BUYER. The BUYER acknowledges that it has been afforded the opportunity to inspect the premises and is aware that there may be hazardous materials on the premises and it agrees to be solely responsible for any legally required removal or other site remediation. The property is being sold "AS IS" with no warranties or representations by TOWN either express or implied. This provision shall survive the delivery of the deed.

5. Construction of Project:

BUYER shall commence construction of Project immediately following the closing and shall diligently and continuously prosecute the work until fully completed, i.e.: all occupancy permits issued; BUYER shall fully complete Project no later than _____. BUYER's obligations under this paragraph shall, at TOWN's option, be more fully set out in a Land Development Agreement, covenant or other separate document, together with a mortgage to secure BUYER's obligations thereunder, to be executed by BUYER at time of closing and recorded with the deed from TOWN to BUYER; any such document(s) shall be superior to BUYER's financing. This provision shall survive the delivery of the deed.

6. Purchase Price and Payment Schedule:

The purchase price for the property being conveyed hereunder shall be \$ _____ and shall be paid as follows:

- (a) \$ _____ having been paid as a deposit.
- (b) \$ _____ to be paid by _____.
- (c) \$ _____ paid at the time of delivery of the deed, in cash, or by certified, bank, treasurer or cashier's check, drawn on a Massachusetts bank and paid directly to the TOWN without the need for further endorsement.

Total purchase price:

In addition to the purchase price described herein, the BUYER shall make a grant to the TOWN of \$_____ for the purposes of improvements to TOWN property in the immediate vicinity of the premises.

7. Closing Documents:

At the time of the closing, the SELLER shall deliver to the BUYER a deed in such form as necessary to convey title to the property, subject to the terms of this Agreement, to the BUYER. The SELLER shall also deliver an affidavit that the SELLER is not a foreign person or non-resident alien within the meaning of Section 897 of the Internal Revenue Code. The SELLER shall also provide evidence of the authority of the SELLER to deliver the deed and of the party executing the deed to do same on behalf of the TOWN.

The BUYER agrees to execute any and all closing documents reasonably necessary to effectuate the conveyance hereunder and as may be necessary to ensure the timely development of the property consistent with TOWN's RFP and BUYER's Proposal and the terms and conditions contained in this agreement. Such documents may include a Land Development Agreement, covenant, mortgage deed restriction(s) and/or other agreement(s) and documents to ensure the performance by the BUYER of its obligations. Any such document(s) shall be in form satisfactory to TOWN, shall contain a provision making the obligations stated therein binding upon BUYER's successors, transferees and assigns, may be recorded, at TOWN's option, and if recorded shall be superior to BUYER's financing. BUYER's compliance with this provision satisfactory to TOWN is a condition of TOWN's obligation to perform, i.e. tender a deed.

8. Time For Performance and Delivery of Deed:

The sale and purchase of the property and the conveyance and delivery of possession of the property and of the deed and purchase price of same shall take place at the office of the TOWN ATTORNEY. The parties shall establish a closing date to be at _____ p.m. on the tenth business day following the expiration of the _____ day period, or any extension thereof, or when BUYER has obtained its permits as provided for in Paragraph 15, whichever is the sooner, unless the parties otherwise agree in writing. It is agreed that time is of the essence of this Agreement.

9. Possession and Condition of the Premises:

Except to the extent that the parties may otherwise agree, full possession of the premises to be conveyed hereunder shall be delivered by the TOWN to the BUYER, free of all tenants and occupants, except as herein provided, at the time of delivery of the deed. The same shall be in the same condition as they now are, reasonable use and wear thereof accepted. The BUYER shall be entitled either personally or by its agents to inspect the premises prior to delivery of the deed for the purpose of determining compliance with the conditions of this Agreement.

10. Need to Perfect Title:

(a) Should the SELLER at the time of the delivery of the deed or at any extension to said time be unable to give title or make conveyance or deliver the premises in accordance with the requirements contained herein, then the SELLER shall use reasonable efforts to remove any infirmities creating its inability as described in this section to make said conveyance, in which event the TOWN shall give notice of same to the BUYER at or before the time for performance hereunder and the closing date shall be extended for up to sixty (60) days or such period as the parties shall agree. "Reasonable efforts" shall not require TOWN to expend more than _____ dollars including attorney's fees.

- (b) If by the expiration of any extended time referred to herein, the TOWN shall have been unable to so remove the defects in the title, deliver possession or otherwise make the premises conform to requirements hereunder, as the case may be, then any deposits made under this Agreement for said lot(s) shall be forthwith refunded to the BUYER and all obligations by and between the parties hereto shall cease and this Agreement shall be null and void without recourse at law or in equity to the parties hereto as relates to said lot(s). However, the BUYER shall have the election at the original delivery date or any extended time therefor, to accept such title as the TOWN can deliver to the premises in their then condition and to pay therefor the agreed purchase price, as may be adjusted by agreement of the parties.

11. Acceptance of Deed:

The acceptance of the deed by the BUYER shall be deemed to be the full performance and discharge of every agreement and obligation of the TOWN, herein contained or expressed, except such as are, by the terms hereof or by the necessary implications of the conditions of this Agreement, to be performed after the delivery of the deed.

12. BUYER's Additional Obligations Contained Hereunder:

The BUYER agrees that it shall work diligently and in good faith with the TOWN in terms of submitting any and all documents, plans and other matters for the review and approval by the TOWN and any other governmental agency or authority to ensure that the work to be performed by the BUYER upon the premises shall be in accordance with the agreement and that said premises shall be maintained by the BUYER and its transferees, successors and assigns all in accordance with the terms and conditions of the agreement. This provision shall survive the delivery of the deed.

13. Use of Funds to Clear Title:

The TOWN may, at the time of delivery of the deed or following same, use the purchase money or any portion thereof to obtain the release or discharge or removal of any and all encumbrances or interests effecting the title, provided that all such instruments obtained are recorded simultaneously with the delivery of the deed or arrangements are made for the recording thereafter in accordance with customary conveyancing practices.

14. Adjustments:

In accordance with the provisions of G. L. c. 59, sec. 2C, an adjustment shall be made at the closing whereby the BUYER shall pay the taxes on the real estate being conveyed hereunder in accordance with all legal requirements. If the amount of said taxes is not known at the time of the delivery of the deed, the same shall be a portion on the basis of the taxes assessed by the Tax Collector for the previous year or the value determined by the Board of Assessors, whichever is the greater, with a reapportionment to be made as soon as the new tax rate and valuation can be ascertained.

15. Building and Other Related Permits:

(a) Governmental Approvals:

Within _____ (_____) days following the date hereof (the "Permit Satisfaction Date") or such later date to which the Permit Satisfaction Date may be extended, in accordance with Paragraph 15(b) hereof, BUYER shall obtain, at its sole cost and expense all Governmental Approvals for construction of the Project, as described in Par. 4. At any time prior to the Permit Satisfaction Date that BUYER reasonably determines that the Governmental Approvals for this project will not be obtained as above provided, BUYER shall forthwith so notify SELLER, whereupon the deposit shall be refunded to BUYER and this Agreement shall thereupon terminate and become void without further recourse to the parties hereto, provided BUYER has used due diligence and reasonable efforts and acted in good faith in pursuing said Governmental Approvals. In the event that BUYER fails to give notice of rescission prior to the Permit Satisfaction Date, as it may be extended in this Section, BUYER shall be deemed to have waived the conditions to Closing contained in this Paragraph 15(a).

The term "Governmental Approval" hereunder shall expressly include those permits which BUYER has identified as necessary for the Project and are identified as follows, with the date by which the same shall be applied for:

1. ANR Plan (Franklin Planning Board Endorsement)
2. Comprehensive Permit (Franklin ZBA)
3. Possible Sewer Extension Permit (Mass. Dept. of Environmental Protection)
4. Request for Determination (Franklin Conservation Commission)
5. Notice of Intent and Local Wetland Filing (If no. 4 is positive) (Franklin Conservation Commission)
6. Building Permit (Franklin Building Department)
7. Public Way Access Permit (Franklin Department of Public Works)

Should there be any additional permits which become necessary for BUYER to obtain due to changes in the law or because of project changes approved by TOWN, the parties shall confer with each other relative to same. TOWN may terminate this agreement if in its reasonable opinion any such new permit will cause an unreasonable delay in the closing, provided however that BUYER may opt to continue and close on or before the Permit Satisfaction Date. Governmental Approvals shall not be deemed to have been received until all appeal periods therefrom shall have expired without appeal, or if an appeal is taken, such appeal shall have been resolved to the reasonable satisfaction of the BUYER.

BUYER shall promptly notify SELLER when all Governmental Approvals have been granted, all appeal periods therefrom having expired without appeal, or if an appeal is taken, when such appeal is resolved to the reasonable satisfaction of BUYER ("the Permit Satisfaction Notice").

Any appeals shall be defended by BUYER at its sole cost and expense. The SELLER shall be kept informed, supplied with such information as it may request and shall be allowed to participate to the extent SELLER desires.

15(b) SELLER hereby authorizes and empowers BUYER in the name of SELLER or BUYER, or both, to make at its sole cost and expense, any and all applications, filings and submissions necessary and appropriate to obtain the Governmental Approvals, as relates to matters involving the SELLER, subject to review and approval by the SELLER, which shall not be unreasonably withheld or delayed. SELLER agrees to cooperate fully with BUYER in securing all Governmental Approvals so long as there is no cost or expense to the SELLER. BUYER shall reimburse and/or pay for any cost or expense incurred by SELLER so long as BUYER is informed of said cost or expense prior thereto and approves of same.

If BUYER has not obtained said approvals by the Permit Satisfaction Date, and upon the its determination that the BUYER has utilized due diligence, reasonable efforts and acted in good faith in attempting to obtain said approvals, the SELLER may, in its sole discretion, extend the Permit Satisfaction Date for an additional period. SELLER may, as a condition of such extension, require a nonrefundable, payment by BUYER, the amount of said payment to be mutually agreed-to by the parties at that time.

BUYER shall inform the TOWN periodically or as requested as to the progress of the Governmental Approvals and shall supply such information as is requested by SELLER.

16. Compliance With Applicable Law:

Any and all actions undertaken by the BUYER in accordance with this Agreement or its obligations to construct and maintain the property under the agreement shall be done in full compliance with all applicable local, state and federal laws, rules and regulations.

17. Deposits:

All deposits made hereunder shall be held in escrow by the TOWN ATTORNEY and the same shall be duly accounted for at the time for performance of this Agreement. In the event of a disagreement between the parties considering the deposit, the deposit shall continue to be held in escrow pending mutual instructions given by the TOWN and the BUYER or in accordance with judicial determination.

18. BUYER's Default and TOWN's Right to Terminate

Each of the following shall constitute BUYER's default and grounds for TOWN to terminate this agreement:

- a. BUYER's failure to tender the balance of the purchase price at the time set for closing or to make any deposit or other payment when due.
- b. BUYER's refusal or failure to execute any agreement restriction, covenant, mortgage or other instrument in form satisfactory to TOWN to ensure the timely construction of the project and/or land use restrictions as described in Paragraph 4.
- c. BUYER's refusal or failure to perform any other obligation imposed upon it by any provision of this agreement PROVIDED THAT TOWN shall have given written notice thereof to BUYER and thirty (30) days have elapsed without BUYER's taking remedial action satisfactory to TOWN.
- d. BUYER's attempted assignment of its rights and obligations under this agreement in violation of Paragraph 28.
- e. BUYER's filing for voluntary bankruptcy or reorganization, BUYER's legal dissolution or formal cessation of business, the filing of an involuntary bankruptcy or other creditor's proceeding against BUYER which BUYER fails to have dismissed within thirty (30) days.
- f. TOWN's determination that any warranty, representation, or information contained in BUYER's Proposal or this agreement was not completely true and accurate when made or is no longer so PROVIDED THAT TOWN shall have given written notice thereof to

BUYER and thirty (30) days have elapsed without BUYER's taking remedial action satisfactory to TOWN.

19. TOWN's Remedies in Event of BUYER's Default:

Should the BUYER fail to fulfill the BUYER's obligations to purchase the property or otherwise commit an event of default specified in the previous paragraph, all deposits made by the BUYER shall be retained by the TOWN as liquidated damages, unless within thirty (30) days after the time for performance of this Agreement, or any extension period, the TOWN shall otherwise notify the BUYER in writing. In the event of BUYER's default, TOWN shall not be limited to retention of BUYER's deposit but shall, instead, have available to it, at its option, all rights and remedies both at Law and in Equity.

20. No Broker Involved: Mutual Indemnification:

The TOWN and the BUYER warrant and represent to each other that they have had no contacts with anyone who would be entitled to a commission or similar fee in connection with the purchase and sale of the premises hereunder. Each party agrees to protect, indemnify and hold the other harmless from and against any and all liability, claims, losses, costs and expenses (including attorneys fees and expenses), should such representation or warranty not be true. The provisions of this section shall specifically survive the delivery of the deed or any earlier termination of this Agreement.

21. Restrictions And Controls Upon BUYER:

In addition to all other restrictions and obligations that may be imposed upon the BUYER pursuant to this agreement, the BUYER agrees for itself and its successors, transferees and assigns, and every successor in interest to the property or any part or portion thereof, and the deed and other closing documents shall be subject to and contain covenants on the part of the BUYER for itself and its successors and assigns that:

- (a) BUYER shall timely construct the Project in full compliance with TOWN's RFP, BUYER's Proposal and all Governmental Approvals, and BUYER agrees to execute a Land Development Agreement covenant, or other separate document, together with a mortgage to secure BUYER's obligations thereunder, and
- (b) The BUYER shall devote the property only to and in accordance with the use(s) as specified in Paragraph 4 of this Agreement, and subject further to the provisions of any applicable laws, rules or regulations. BUYER agrees to execute permanent restrictions to be contained in the Deed or other recorded instrument to ensure that property's use shall be limited to _____, and
- (c) BUYER shall not discriminate upon the basis of race, color, sex, religion, physical condition or national origin in the sale, lease or rental or in the use or occupancy of the property or any improvements erected or to be erected thereon or any part thereof, and
- (d) BUYER agrees to execute deed restrictions and/or an agreement to ensure that all property shall be owned or treated as owned by a for profit entity and not as tax-exempt or reduced tax property; and if such property becomes owned by a non-profit or would

regardless of ownership be entitled to reduced assessment or reduced tax obligations or treatment, that the property owner shall nonetheless be taxed and/or pay taxes or in lieu of tax payments based on what the taxes would be if the owner/operator was a for profit entity or activity, and

- (e) BUYER agrees to execute such deed restrictions as necessary to ensure access to and use of the subject property as provided for herein, including for parking purposes on the subject property.
- (f) BUYER agrees to execute an easement for the creation of a maintenance and emergency access lane between the subject property and the adjoining property of the Town of Franklin.
- (g) BUYER agrees to execute such conditions as set forth by TOWN regulatory bodies and departments, such as, by way of example, conditions imposed by the Planning Board as part of the permit process.
- (h) Conveyance is subject to such easements as shown on the final subdivision plan approved by the Planning Board for water, sewer, utilities and access. The TOWN shall make said conveyance subject to reserving said easements or the BUYER shall grant said easements to the TOWN.

These obligations and covenants may be contained in the deed and in such other documents requested by the SELLER, including a recorded Land Development Agreement, covenant, easement or other instruments, reasonably necessary to ensure their continued existence and being in full force and effect.

It is intended and agreed, and the deed and other closing documents shall so expressly provide, that the covenants provided under this Agreement shall run with the land, binding to the fullest extent permitted by law and equity for the benefit and in favor of, and enforceable by the TOWN, its successors and assigns, both for and its or their own right and also to protect the interest of the community and other parties, public and private, in whose favor or for whose benefit the covenants have been provided, against the BUYER, its successors and assigns, and every successor in interest to the property or any part thereof or any interest therein and any party in possession or occupancy of the property or any part thereof. The covenant provided herein shall remain in effect without limitation as to time. The closing documents may include a mortgage or other document to ensure the performance of the BUYER of its obligations to construct the project as called for hereunder or otherwise approved by the SELLER, which mortgage shall be discharged upon the issuance of the certificate of occupancy, subject to an agreement by the BUYER to complete the construction of such other items not then completed which would not otherwise delay the issuance of a certificate of occupancy. BUYER's satisfaction of its obligations contained in this Paragraph 21 and its subparts shall be both a condition to TOWN's obligation to deliver the deed and shall survive said delivery.

22. Limitation on Liability of SELLER:

No officer, director, employee, agent, official or representative of the TOWN or any of such person's separate assets or property shall have or be subject to any liability with respect to any obligation or liability of the TOWN. It is acknowledged and understood by the parties that the members of the TOWN executing this Agreement and any related documents thereto either now or in the future, are doing so in their official capacity only and not in their individual capacity. The

provisions of this clause shall specifically survive delivery of the deed or earlier termination of this agreement.

23. Non-Discrimination In Employment:

The BUYER, for itself, its successors and assigns, agrees that in the construction of the improvements in accordance with the provisions of this Agreement:

- (a) The BUYER will not discriminate against any employee or applicant for employment because of race, color, sex, religion or national origin. The BUYER will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The BUYER agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the TOWN setting forth the provisions of this non-discrimination clause.
- (b) The BUYER will, in all solicitations or advertisements for employees placed by or on behalf of the BUYER, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

24. BUYER's Access to Property Prior to Transfer:

TOWN may permit BUYER access to the property prior to transfer for the purpose of inspections, measurements testing and/or preliminary site work; if TOWN chooses to provide access, it may condition its approval upon BUYER's execution of an access agreement satisfactory to TOWN which shall, at a minimum, require BUYER, at its expense, to restore any land disturbances or otherwise to provide remediation for BUYER's activities in the event BUYER fails to take title to the property, to waive in advance all claims for injury or damages; to indemnify and hold TOWN harmless from and against all liability, damage or expense arising from any activity of BUYER or its agents, consultants or contractors, and to provide surety satisfactory to TOWN.

25. TOWN's Access To Property Subsequent to Transfer:

The BUYER, its successors and assigns, shall from time to time until the construction is completed, at all reasonable hours, give to the duly authorized representatives of the TOWN, free and unobstructed access for inspection purposes to any and all of the improvements constructed on the property by the BUYER, its successors and assigns, and to all open areas surrounding the same. SELLER shall provide BUYER, its successors and assigns and agents, access to the Premises upon twenty-four (24) hours notice. This provision shall survive the delivery of the deed.

26. Notices:

Any and all notices hereunder shall be deemed given if (i) delivered by hand, or (ii) sent by certified or registered mail, postage pre-paid, or delivered in a manner by which civil process may be served, if delivered/addressed as follows: To the TOWN: TOWN OF FRANKLIN, with a copy to: Mark G. Cerel, Franklin Town Attorney, 355 East Central Street, Franklin, MA 02038; to the BUYER _____, with a copy to its attorney:
_____.

27. Representation As To Warranties By the BUYER Relative To Execution Hereof:

The BUYER expressly warrants and represents to the TOWN, and the TOWN in reliance thereof, entered into this agreement that:

- (a) The BUYER is a Massachusetts corporation, validly existing, with full right, power and authority to make, execute, deliver and perform this Agreement, and
- (b) The person executing this Agreement on behalf of the BUYER is duly and validly authorized to do so. A certificate of corporate vote shall be supplied by the BUYER upon the execution of this Agreement, and
- (c) The BUYER is acquiring the property with the express intent to develop it in full compliance with TOWN's RFP and BUYER's Proposal and within the agreed-upon time period.

28. Estoppel Certificate:

At the request of either party prior to the delivery date, and any time and from time to time, the other shall execute and deliver within ten (10) business days after request therefor, a certificate which acknowledges facts concerning this Agreement, any provisions of this Agreement and any payments made in connection with this Agreement.

29. Assignment:

The BUYER shall not assign its rights and obligations under this Agreement without the prior consent of the TOWN, provided however, that an assignment to an affiliate organization controlled by BUYER shall be approved upon the presentment of satisfactory evidence to the SELLER that the affiliate is controlled 100% by the BUYER. The giving of consent under any other circumstances shall be solely within TOWN's discretion.

30. Recordation:

BUYER shall not record either this agreement or any notice thereof without TOWN's prior written permission; any violation of this provision shall render this agreement null and void at TOWN's option.

31. Construction Of Agreement And Severability:

This Agreement, executed in multiple originals, is to be construed as a Massachusetts contract and is to take effect as a sealed instrument. If any provision of this Agreement shall to any extent be deemed invalid, the remainder of this Agreement shall not be effected thereby and shall remain in full force and effect as if such invalid provision were never included herein, if the remainder would continue to conform to the requirements of applicable law and the Plan. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement may not be cancelled, modified or amended except by a written instrument executed by both the TOWN and the BUYER. This Agreement shall not be recorded by the BUYER; if the same is recorded by the BUYER, then at the option of the TOWN, this agreement may be terminated and the deposit shall be forfeited to the TOWN. The captions used herein are only being used as a matter of convenience and are not to be

considered a part of this Agreement or to be used in determining the intent of the parties entering into same.

32. Obligations and Rights and Remedies Cumulative and Separable

The respective rights and remedies of the TOWN, the Town of Franklin, and the BUYER, whether provided by this Agreement, or by law, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not preclude the exercise, at the same or different time of any other such rights or remedies.

33. Covenants to be Enforceable by TOWN

The covenants herein contained, which are expressed to be covenants running with the land, shall be stated or incorporated by reference in any installment or conveyance or lease relating to the Property or any portion thereof or any interest therein and shall in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement be, to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and TOWN against the BUYER (including its successors and assigns to or of the Property or any part thereof or any interest therein and any party in possession or occupancy of the Property or any part thereof). It is the intention of the TOWN that the benefit of the covenants running with the land which are contained in any instrument or conveyance relating to the Property shall be enforceable only by the TOWN, those authorized by law to enforce the same and their successors and assigns.

34. TOWN's Officials and Officers Barred From Interest

- a. No member, official or employee of the TOWN shall have any personal interest, direct or indirect, in this Agreement or the BUYER, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official or employee of the TOWN shall be personally liable to the BUYER or any successor in interest in the event of any default or breach by the TOWN or for any amount which may become due to the BUYER or to its successors or on any obligations under the terms of this Agreement.
- b. After the date hereinabove first written, the BUYER shall not, without a prior finding by the TOWN that such action is consistent with the public interest, employ in connection with its obligations under this Agreement, any person who has participated in the planning or execution of the Plan or related Project and who is named on any list which may be furnished by the TOWN to the BUYER as having so participated, or permit any such person to directly or indirectly acquire an interest (except an interest based upon the ownership of its capital stock if such stock is publicly held or offered) in the BUYER or in the Property prior to the completion of the project in accordance with this Agreement and the Plan.
- c. The BUYER covenants that it has not employed or retained any company or person (other than full-time, bonafide employee working for the BUYER) to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person any percentage, or brokerage fee, contingent upon or resulting from the execution of this Agreement.

35. Matters To Be Disregarded

The titles of the several articles and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in constructing or interpreting any of the provisions of this Agreement.

36. Agreement Binding on Successors, Transferees and Assigns

The respective provisions of this Agreement, in accordance with their terms, shall be binding upon, and shall inure to the benefit of the successors, transferees and assigns of the TOWN, the BUYER and the public body or bodies succeeding to the interests of the TOWN, and to any subsequent grantees of the Property.

37. Incorporation of other laws and documents:

It is agreed and understood that all applicable laws, rules and regulations, whether stated herein or not, are deemed incorporated by reference herein. Furthermore, it is agreed and understood that terms of the TOWN's RFP dated _____ and the Developer's proposal dated _____ are incorporated by reference herein, except as the same may be changed by the terms of this Agreement. In the event of a conflict, the terms of this Agreement shall govern.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the day and year first written above.

Approved as to form:

SELLER, Town of Franklin by,

Mark G. Cerel
Franklin Town Attorney

BUYER, _____
by,

, President